

U. S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C.

In the Matter of:)	
)	
ASHLAND, INC.)	SETTLEMENT AGREEMENT
Ashland Petroleum Company,)	
and SuperAmerica Group)	
)	AED/MSEB - 4778
Respondents.)	
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Ashland, Inc., and its divisions Ashland Petroleum Company, and SuperAmerica Group (hereafter "Respondents" or "Ashland").

Preliminary Statement

1. On March 2, 1998, a Notice of Violation ("Notice") was issued to Ashland for nine (9) violations of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline and/or the volatility regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. These laws provide that no person shall sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline unless such gasoline meets the applicable Reids vapor pressure ("Rvp") standards specified at 40 C.F.R. § 80.41 and/or § 80.27. Violators of these laws are subject to a maximum civil penalty of \$25,000 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the alleged violations, Respondents' history of compliance with the regulations, and the size of Respondents' business, EPA proposes a civil penalty of \$20,000 (hereafter "the proposed penalty").

3. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

4. The parties agree that the settlement of this matter is in the public interest and that this Settlement Agreement ("Agreement") is the most appropriate means of resolving the matter.

5. By entering into this Agreement, Respondents do not admit that it is in any way responsible for the alleged violations or that any violations have occurred.

6. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty proceeding arising out of this Agreement or the subject matter of this Agreement:

a. At all relevant times, Ashland was a retailer, distributor, and refiner as defined within the meaning of 40 C.F.R. § 80.2.

b. On September 13, 1996, we issued to Ashland a Notice and a Request for Information pursuant to section 114 of the Act.

c. As a result of Ashland's response to the Request for Information, EPA determined that after June 1, 1996, nine (9) of Ashland's SuperAmerica retail outlets were selling gasoline that exceeded the applicable Rvp standard for conventional and/or reformulated gasoline. This constitutes nine (9) violations of section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the regulations issued thereunder 40 C.F.R. §§ 80.27 and 80.78.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, the retailer (SuperAmerica, a division of Ashland, Inc.), the distributor (Ashland Petroleum Company, a division of Ashland, Inc.), and the refiner (Ashland Petroleum Company) whose corporate, trade, or brand name that appears at the facility where the violation is found shall be deemed in violation. Therefore, Ashland is liable for nine (9) violations of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1) and/or §80.79(a)(3).

e. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. § 80.20, and other provisions of law.

7. After considering the gravity of the alleged violations, Respondents' history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$20,000 subject to successful completion of the terms of this Agreement.

Respondents' agree to pay \$20,000 to the United States of America within thirty (30) days from the date that this Agreement is executed by EPA and returned to Respondents by certified mail return receipt requested ("the due date"). In accordance with the Debt Collection Act of 1982, if the debt is not paid within 30 days following the due date, interest will accrue from the due date as the rate of eight percent (8%) per annum through the date of actual payment. A late payment handling charge of \$20.00 will also be imposed if the amount is not paid by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

Respondents agree to pay the amount by check made payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 4778

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4778

8. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 7 of this Agreement, Respondents agree to pay a stipulated penalty of \$40,000. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount shall be immediately due and owing. The parties further agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection pursuant to § 211(d) of the Clean Air Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 211 of the Clean Air Act; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to

comply, EPA may proceed in an action based on the original claim of violation of § 211 of the Clean Air Act, 42 U.S.C. § 7545, and Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

a. EPA agrees to provide a written notice to Respondents before finding Respondents in default of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Respondents shall have five (5) business days to receive the notice in the mail. Thereafter, Respondents shall have ten (10) business days to make all payments or cure the default. The notice and any correspondence concerning this Agreement shall be sent to Respondents' attorney:

Williams Bumpers
BAKER & BOTTS
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

9. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondents' attorney.

10. Respondents hereby represent that the individual or individuals executing this Agreement on behalf of Respondents are authorized to do so and that such execution is intended and is sufficient to bind Respondents.

11. Respondents waive its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.

12. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

13. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

14. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondents in the event of default or noncompliance with this Agreement; for violations of § 211 of the Clean Air Act, 42 U.S.C. § 7545, which

are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects, or relieves Respondents of responsibility, to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Ashland, Inc.

885
by:



Date: October 12, 1998

United States
Environmental Protection Agency

by:



Date: 11/3/98

Bruce C. Buckheit, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Clara G. Poffenberger
BAKER & BOTTS, L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB - 4778
Ashland, Inc.

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND

Dear Ms. Poffenberger:

On September 13, 1996, we issued to Ashland a Notice of Violation ("Notice") and a Request for Information pursuant to Section 114 of the Clean Air Act. As a result of Ashland's response to the Request for Information, EPA has determined that after June 1, 1996, nine (9) of Ashland's SuperAmerica retail outlets were selling gasoline that exceeded the applicable Reid vapor pressure ("Rvp") standard for conventional and/or reformulated gasoline. See Enclosure. This constitutes nine (9) violations of section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the regulations issued thereunder 40 C.F.R. §§ 80.27 and 80.78.

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of such violation and the economic benefit or savings resulting from the violation. Section 205(c) further authorizes the Administrator to compromise or remit, with or without conditions, any such penalty. After consideration of the magnitude and the gravity of the violations, the apparent size of your business, and your history of compliance with the Fuels Regulations, we propose a civil penalty for the violations alleged in this Notice of \$91,000.

We encourage early settlement of such matters. If we cannot settle this matter promptly, we reserve the right to seek a much larger civil penalty either administratively or judicially in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
Air Enforcement Division
401 M Street, S.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

Bruce C. Buckheit

Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

ENCLOSURE

<u>Store Number</u>	<u>Grade</u>	<u>Date of Rvp Test</u>	<u>Rvp (psi)</u>	<u>June 1st Exceedance</u>	<u>Proposed Penalty</u>	
4421	90 CG	5/31/96	10.98	10.0 = .98 psi	\$ 8,000	
Duration of Violation 6/1 thru 6/6/96.						1.
4412	90 CG	5/31/96	10.56	10.0 = .56 psi	\$ 8,000	
Duration of Violation 6/1 thru 6/8/96.						2.
4081	93 CG	5/30/96	10.86	10.0 = .86 psi	\$ 8,000	
Duration of Violation 6/1 thru 6/5/96.						3.
4139	93 CG	5/28/96	13.05	10.0 = 3.05 psi	\$10,000	
Duration of Violation 6/1 thru 6/7/96. No S S O.						4.
4378	92 CG	5/23/96	10.79	10.0 = .79 psi	\$ 8,000	
[Retested]		6/06/96	10.53	10.0 = .53 Psi		
Duration of Violation 6/1/thru 6/9/96.						5.
4002	92 CG	5/20/96	11.59	10.0 = 1.59 psi	\$10,000	
		5/30/96	11.08*	10.0 = 1.08 psi		
		6/5/96	10.66*	10.0 = .66 psi		
Duration of Violation 6/1 thru 6/15/96.						6.
4396	92 CG	6/07/96	10.5	10.0 = .5 psi	\$ 7,000	
Duration of Violation 6/1 thru 6/12/96						7.
4042	89 CG	6/17/96	10.49	10.0 = .49 psi	\$ 7,000	
Duration of Violation 6/1/thru 6/20/96						8.
5686	93 RFG	5/18/96	10.02	8.3 = 1.72 psi	\$25,000	
		5/29/96	8.68*	8.3 = .38 psi		
		6/06/96	8.42*	8.3 = .12 psi		
Duration of Violation 6/1 thru 6/6/96.						9.

Total: \$91, 000